

City of Key West
CITIZEN REVIEW BOARD

**Annual Report
for
2009**



January 25, 2010

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2009 Annual Report

CITY OF KEY WEST CITIZEN REVIEW BOARD

I. Introduction

The City of Key West Citizen Review Board (CRB) has been actively reviewing complaints filed by citizens against Key West Police Officers since January 2004. This report was based on data and events occurring in the calendar year of 2009 which will be considered the "reporting period". This report is intended to give the reader an overview of the progress of the Board's efforts and major activities undertaken by the CRB during this reporting period. Readers may obtain a copy of this report and previous annual reports by visiting the City of Key West web site www.keywestcity.com and then selecting CRB under the city department drop down menu. This report is submitted in accordance with Section 1.07(X) of the Charter of the City of Key West.

Like other municipal governmental departments throughout the State of Florida, the CRB has faced considerable limitations on funding its operations based on the state wide financial constraints. Despite said financial limitations, the CRB has continued to progress forward with its goal of increasing the public's confidence in the City of Key West Police Department's (KWPD) ability to fairly and thoroughly investigate citizen complaints. The CRB budget FY 08-09 was \$85,422.00 and FY 09-10 is \$91,680.00. The increase in the CRB budget was approved by the City Commission when adopting #5 of the CRB recommendation in its 2008 Annual Report to provide the Executive Director the standard health care benefits offered to other city employees.¹

The CRB would like to take this opportunity to again recognize the ongoing professionalism of the KWPD members in this report and its recommendations herein, are by no means meant to overshadow this fact. The KWPD, under its current leadership, reflects a professional crime fighting organization and the CRB is appreciative of its ongoing efforts. Chief Lee's administration and the CRB share the same early intervention philosophy to help minimize miscommunications and dispel misinformation involving alleged officer misconduct. Said early intervention processes have proven to reduce the

¹ See Key West CRB Annual Report for 2008, page 28. Said action by the City Commission has shown the City Commission's pledge to support the CRB's mission and help attract and retain professional staffing for its Executive Director position.

number of formal complaints to the CRB as more fully explained herein in section V(A) of this Annual Report. The KWPD continues to professionally protect paradise.

We hope that this report will enable the reader to understand the role of the CRB. If there are any questions, please call Executive Director Stephen C. Muffler, Esquire at (305) 809-3887 or email us at crb@keywestcity.com.

The Entrance of the "Working Agreement" between the CRB & KWPD
(Negotiated during October 2008-December 2008 and entered into force on January 27, 2009)

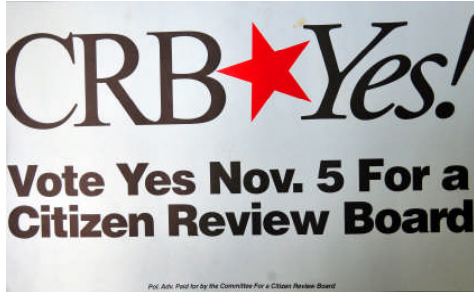


From Left to Right Seated: Chief Donald Lee & CRB Chairman Bryan Green
Standing: Executive Director Stephen Muffler & Lt. David Smith

Special thanks to the City of Key West IT Department for its ongoing technical assistance to the CRB and its operations.

II. About The Citizen Review Board

(A) What is the CRB?



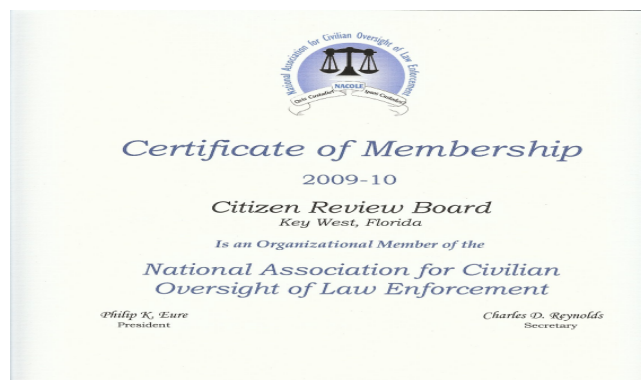
Key West voters created the Citizen Review Board (CRB) on November 5, 2002 to review and/or investigate citizen complaints filed by the public against Key West Police Officers for alleged professional misconduct.

(B) CRB Mission Statement

The mission of the CRB is to promote public confidence in the professionalism and accountability of the police officers of the Key West Police Department (KWPD).

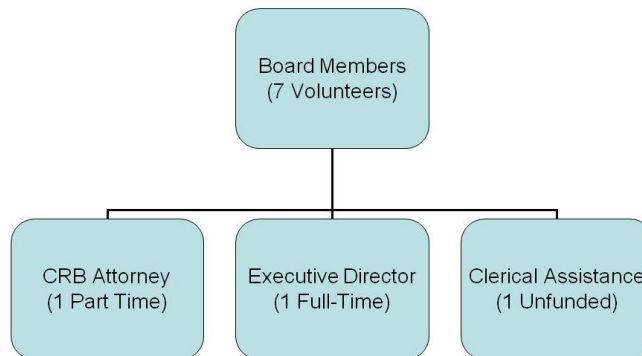
(C) Purpose of the CRB

The purpose of the CRB is to establish guidelines for the receipt and processing of allegations of KWPD police misconduct in compliance with the Charter of the City of Key West Article I, Chapter 1.07. The CRB also independently reviews citizen complaint investigations against KWPD police officers, recommends changes in departmental policy, and when deemed appropriate by the Board, conducts an independent investigation of citizen complaints. The CRB forwards findings and/or recommendations to City management, the Chief of Police, State Attorney, other state and federal law enforcement agencies and/or grand juries if appropriate.



III. Members & Staff of the Citizen Review Board

Citizen Review Board



The City of Key West Citizen Review Board is composed of seven residents of the City of Key West and who are not employed by the City. Originally, the City Commission appointed four (4) members from nominations from community based civic and social service organizations. The original four (4) members then selected three (3) additional members from applications submitted by the general public. Any vacancies of these seats are filled in the same manner (Commission versus Board Appointed Positions). As with other city boards and commissions, these are unpaid positions. The term in office for each Board member is four (4) years and a board member can serve no more than nine (9) consecutive one (1) year terms.



(Board Group Pictures Provided Courtesy of radiofreekeywest.com)



In accordance with 1.07(IV)(d), Board members have received training through various sources. These sources include several presentations by Executive Director Muffler, ongoing review of police professionalism publications and two (2) members, Mark Kielsgard and Hayward Magby, attended the National Association of Civilian Oversight of Law

Enforcement (NACOLE) Conference and workshops at NACOLE'S Annual meeting in Austin Texas in October of 2009. Both members thereafter briefed the other Board members as to the information learned and materials from the NACOLE conference were made available to the entire Board via the Board's website. More information on NACOLE can be found at www.nacole.org

The Board Members who served in 2009 are:

Bryan Green, Chairman. Bryan Green moved to Key West in 2000 with his partner Tony Konrath. He is the Chairman of the Citizens Review Board. He is also Vice Chairman of the Performing Arts Center of Key West (Tennessee Williams Theater) and an Associate Board member of Wesley House and has served on a number of Not For Profit Boards including the Key West Business Guild and the FRC for Aids Help Inc. He also remains on the Board of a number of Charities and Trusts in the UK covering Drug Addiction and Rehabilitation and is past Chairman of War on Want, one of Europe's largest agencies fighting poverty in developing countries. Bryan is a member of the Royal Institute of British Architects, Fellow of the Chartered Society of Designers and was appointed to the Royal Victorian Order in recognition of his work for the British Government and the Prince's Trust on urban villages and affordable housing. He remains an advisor to HM Government in addition to his daytime job as Chairman of a group of Architect practices in London and Dublin currently designing a wide range of developments from airports to hotel to industrial parks throughout Continental Europe. **The Board appointed Bryan Green and his term expires June 2011, but subject to renewal.**

Dr. Kevin Collins, Vice Chair. Kevin D. Collins is a five year resident of Key West. He attended graduate school at New York University in the field of clinical psychology. While living in the city Kevin was employed by the NYC Health and Hospitals Corporation at Bellevue Hospital Center and taught as an Adjunct Professor. Eventually he moved to Connecticut where he worked as the Director of Children and Family Services for a private substance abuse hospital. In 1995 he opened a private practice in Ridgefield Connecticut. Since moving to Key West, Kevin had been employed by Wesley House Family Services in a number of positions. He is a graduate of the 2008 Key West Ambassador Class and volunteers his time at The Tropic Cinema, Habitat for Humanity, and the Cooking With Love Program. **The City Commission appointed Kevin Collins to replace Adare Fritz and Dr. Collins' term expired June 2009 and he was replaced by Hayward Magby.**

Virginia Altobello, Member. Virginia Altobello was born in Manhattan New York and graduated cum laude with an AA degree from Fairleigh Dickinson University. She first arrived in Key West in 1961 with Naval Officer husband. In 1983, after many winters visiting, moved here permanently. Her career background includes: modeling, management of family real estate, executive in operations department of two major department stores in New York City which included working with police detectives and private investigators to help reduce employee theft and customer shoplifting. Virginia graduated from Key West Citizen Police Academy in 2006 and KW Ambassador Class in 2008. She is now retired but working part-time at Southernmost Hotel Collection and enjoying writing and has published two articles in the Miami Herald. She has also co-authored prize-winning play performed for New Plays in May Series at Waterfront Playhouse. **The City Commission appointed Virginia Altobello to replace Dr. Susan White and her term expires June 2010, but subject to renewal.**

Andrea "Trice" Denny, Member. Andrea Patrice Denny, known as Trice, is originally from LaBelle, Fla. She is a retired Navy journalist and now works as a public affairs specialist for Naval Air Station Key West. A seven year resident of Key West, Trice is also a City Ambassador and in her spare time, DJs at local radio station Island 107.1. **The City Commission appointed Trice Denny, to replace J. Rohrschneider and her term expires June 2010, but subject to renewal.**

Mike Driscoll, Member. Mike Driscoll was born and raised in New York City. Mike Driscoll joined the Navy in 1972 after graduating from high school. He initially intended to serve just four years in the Navy, but ended up serving over 33 years on active duty. One of his tours of duty brought him to Key West. Once Mike retired from the Navy, he did like many do and returned to Paradise 2005 to settle down. He holds membership in the following organizations: Veterans of Foreign Wars, Disabled Americans Veterans, Non-Commissioned Officers Association, Senior Enlisted Academy Alumni Association, and the Surface Navy Association. He is a member of the Key West Military Affairs Committee, Key West Art and Historical Society, Key West Maritime Historical Society, The Florida Historical Society and Library of Florida History, Navy League, Fleet Reserve Association, and the American Legion. He is an associate member of the Fraternal Order of Underwater Swimmers School, Key West, Florida. He is a member of the Patriot Guard Riders who show respect for our nation's fallen heroes, their families and their communities. They shield the mourning family and their friends from interruptions created by any protestor or group of protestors and that is accomplished through legal and non-violent means. He is also a member of Moore's Marauders, an organization that conducts expeditions around the world looking for and finding remains of those that have been

declared missing in action. This provides closure for family members and returns those who have given their life for our freedom a final resting place in their own homeland. He has earned a career certificate in Corrections and a Bachelors Degree in History/Government. He is a certified SCUBA diver and a licensed U.S. Merchant Marine Officer. In his spare time he enjoys reading, fishing, cooking, scuba diving and gardening. He resides in Key West, Florida, with his wife Suzanne Runnels. **The City Commission appointed Mike Driscoll and his term expires June 2011, but subject to renewal.**

Dr. Mark Kielsgard, Esquire, Member. Dr. Mark D. Kielsgard is a 10 year resident of Key West and an adjunct professor of law, professor of international studies and a former law partner with Love, Kielsgard and Associates. He served as a trial and appellate lawyer who handled approximately 2000 cases, argued several matters before the Virginia Supreme Court and had a case of first impression before the U.S. Court of Appeals. He received his JD from Rutgers University Law School and LL.M. from St. Thomas University School of Law and holds a JSD in International Human Rights Law. Dr. Kielsgard has studied abroad in Austria, the Netherlands and Ireland, and is a Marie Curie Scholar from Leiden University. He has published several lead articles in academic journals -- translated in up to four languages -- in the areas of international security law, human rights, international criminal law, genocide, and international economic policy. He is finalizing his first book, which deals with the International Criminal Court, and has lectured and made presentations on human rights, civilian oversight of police, and terrorism before the American Civil Liberties Union and other groups. **The Board appointed Dr. Mark Kielsgard and his term expires June 2010, but subject to renewal.**

Susan Srch, Vice Chair. Susan C. Srch is a 6 year resident of Key West, originally from the suburbs of Chicago, Illinois. She is a retired police officer having served 26 years with the Oak Brook police department, attaining the rank of Lieutenant/Division Commander. She has a Masters degree in Criminal/Social Justice from Lewis University and a graduate of the Key West City Ambassador's program. She currently works part time as an office manager for the T-Shirt Factory. **Susan Srch is a Board appointed member who replaced Rev. Thornton who resigned December 8, 2008. Susan Srch was reappointed by the Board in June 2009 to serve until June 2013, but subject to renewal.**

Hayward Magby, Member. Hayward Magby returned to Key West in 2002 with his spouse and Pastor, the Reverend Dr. Gwendolyn Magby. He received his Speech Communications degree at Jackson State University. He continued graduate work in Counseling in England and Ball State University. His tour of duty from Alaska brought him to Langley Air Force Base where he continued graduate work in Education at Old Dominion in Norfolk. Mr. Magby is a Viet Nam Veteran and retired Non-Commissioned Officer in Personnel Administration and Electronic Security Intelligence in the United States Air Force. Since residing in Key West he has been a community organizer and currently the Department of Education's Substance Abuse and Mental Health Service Administration (SAMHSA), Program Coordinator at a non-profit organization, AIDS Help. He is secretary of the Martin Luther King Jr. Scholarship Committee; Chairperson of Tropical Florida Presbytery, Disaster Relief Committee; a Florida representative for the Southeast Region National Black Presbyterian Caucus; a board member of the Neighborhood Accountability Board (Restorative Justice Prevention Program). In his spare time he enjoys volunteering for Monroe County Health Advisory Council, Habitat for Humanity, and mentoring youth in the Key West Community. **The City Commission appointed Hayward Magby in June 2009 and his term expires June 2013, but subject to renewal**

The CRB staff during 2009:

The Executive Director of the CRB is contracted with the City of Key West and reports to the Chairman of the Board. Stephen C. Muffler, Esquire performed these duties during the reporting period. The CRB attorney is contracted with the City of Key West and reports to the Board. Robert J. Cintron, Jr., Esquire performed these duties during the reporting period. The clerical position identified in City Charter provision 1.07 IX(c) remains unfunded and those responsibilities have been undertaken by the Executive Director. Under City Charter provision 1.07 I(c), the CRB may retain the services of professional investigators as needed.

IV. The Citizen Review Board's Authority & Responsibility

The CRB has the authority to review and investigate citizen complaints involving Key West Police Department personnel and forward findings and recommendations to City management, the Chief of Police, State Attorney, other state and federal law enforcement agencies and/or grand juries. Pursuant to City Charter Provision 1.07 I (a), the CRB is independent of the Key West Police Department (KWPD), other municipal City departments, and to a great extent City Management and City Commission.

Pursuant to 1.07(I)(d) the CRB has the ability to "subpoena witnesses and documents when conducting an investigation.." Said authority is currently being challenged by the Police Benevolent Association (PBA) which will be discussed in section V herein. The CRB is a neutral body designed to be a bridge between the community and the Police Department. It was designed to give the public confidence that accusations of misconduct made against an officer will be fairly and thoroughly investigated. In addition to being a neutral hearing body, the CRB offers a public forum for citizens who want to express their opinion on police-related issues. Finally, the CRB adds additional transparency to the police disciplinary process by providing access to public documents via its webpage, acts as a clearing house for information relative to police professionalism organizations and data, offers complaint and commendation forms on its interactive website as more fully explained in section VII of this report.

The CRB independence facilitates and guarantees CRB's review of complaints and its policy recommendations are done "in the sunshine" on a fair and impartial basis. The CRB's near autonomous structure and independence is a paramount characteristic required to successfully perform its functions under the City Charter.

V. The CRB Complaint Review Process

(A) Lodged Complaint Process

Typically, a complainant contacts the CRB office to discuss what they feel is a police professionalism issue. The CRB Executive Director at this stage evaluates the issue to confirm it falls within the CRB jurisdiction, and if not, the complainant is referred to the proper agency. If the issue falls within the CRB jurisdiction, the Executive Director attempts to address the matter with the complainant and the applicable KWPD division before a formal complaint is submitted and/or explains to the complainant that the issue on its face is not a police professionalism issue. The goal of this early intervention process is to reduce the number of formal complaints and quickly and amicably resolve the complainant's issue, to the satisfaction of all involved stakeholders. Should the issue be successfully resolved in this fashion, it is classified as a "lodged complaint".

(B) Formal Complaint Process

If the issue cannot be quickly resolved to the satisfaction of the complainant and/or the matter is of a serious nature that it requires attention by the CRB, then the matter raises to the level of a "formal complaint" in which the complainant is provided a complaint form to be properly filled out documenting the allegation of misconduct.

All formal complaints received by the CRB office are forwarded directly to the KWPD Internal Affairs Bureau (IA) and the Chief of Police within two (2) days of receiving the complaint. IA generally has 45 days to complete an investigation or inquiry and forward findings to the Chief of Police, the CRB and the complainant. However, the CRB reserves the right to commence an independent investigation at any time.

The CRB Executive Director contacts the complainant to find out if the complainant is satisfied with the ultimate results of IA's investigation. This is usually accomplished by a confirmation letter affirming the complainant's position being mailed to the complainant and/or the complainant is advised of a public Board review of his/her file and encouraged to participate in the same. Additionally, when a complaint is returned to the CRB by IA, the Executive Director reviews it for completeness and writes an executive summary for the

Board after the completion of the IA investigation. The Board then reviews each allegation in each case, reflecting on the complainant's additional comments/testimony and IA's additional statements at a public meeting. The Board thereafter makes a recommended finding based on preponderance of the evidence.

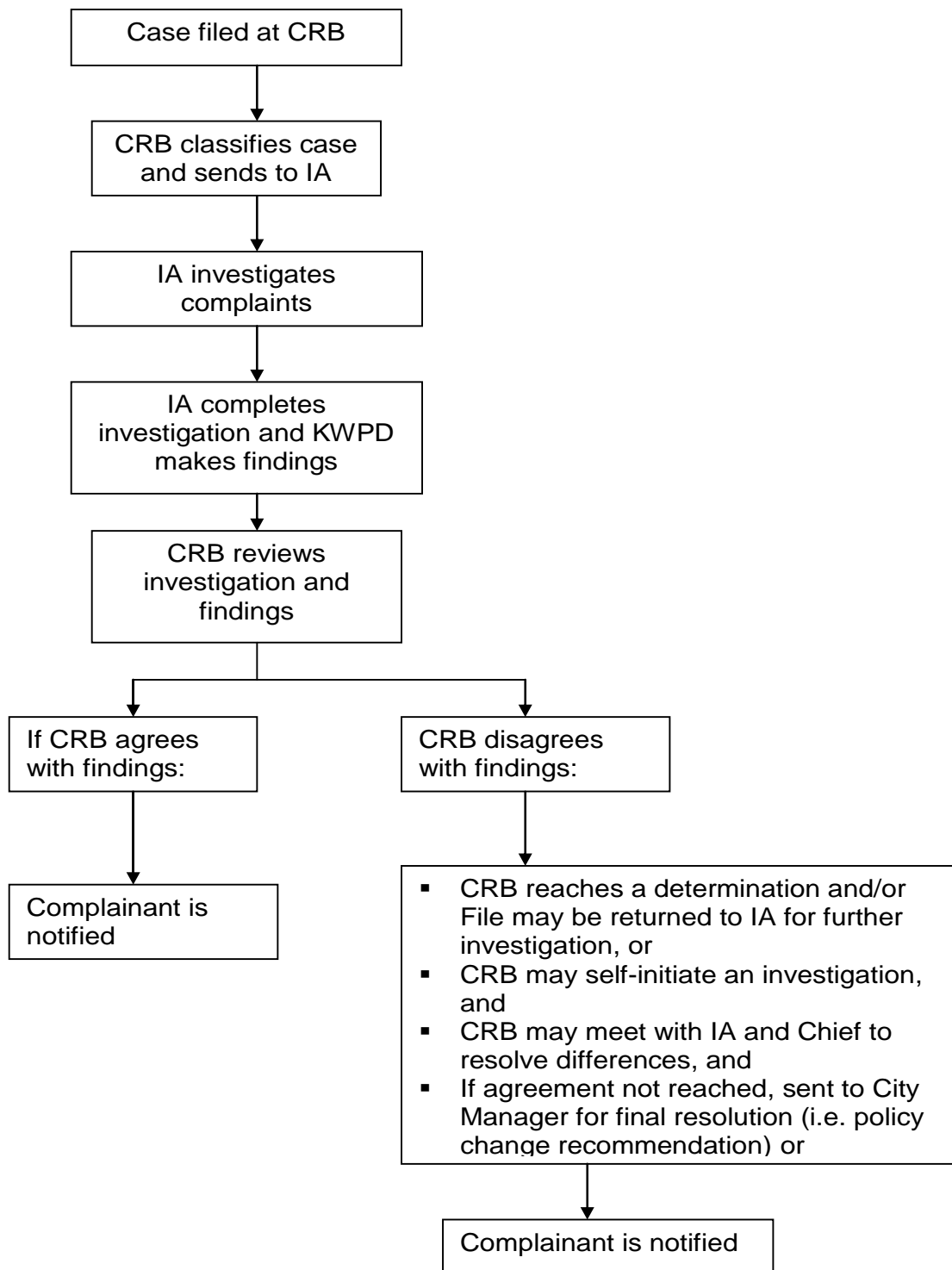
On the occasion, the CRB review reveals that the IA investigation or inquiry is inadequate or incomplete, the CRB has the option of returning the file to IA or conducting its own investigation. Typically the CRB will refer the file back to IA and outline the areas that require further inquiry or investigation. The CRB also has the option to conduct its own investigation employing its own private investigator and has exercised this option on several occasions. Following the review of a complaint, the Board may also consider the KWPD policies that are in place that relate to the complaint.

At the conclusion of the review or investigation, the CRB forwards its written findings and conclusions to the Chief of Police and to affected officers and, to the extent permitted by law, to the complainant. The Chief of Police must respond within 30 days if a response is mandated. The Police Chief and the City Manager have the sole responsibility for discipline.

During this review process, the Board also critiques the quality of the investigation and investigative process. This review and comment by the Board gives City and KWPD management the advantage of having a perspective that is not found in most communities. This transparent process allows for the citizenry to participate in its government and to inspire confidence in the KWPD disciplinary process. The mere existence of civilian police oversight boards, like the CRB, has been considered by NACOLE as deterrence to unprofessional police conduct which logically would result in the reduction of formal filed complaints from citizens.

Figure 1, to follow on next page, outlines the typical formal complaint processing procedure. However, at anytime during this process the CRB can commence its own investigation.

CRB COMPLAINT PROCESS CHART



(C) The CRB Complaint Process & Florida Law:

Of noted importance to CRB & IA operations and their overall effectiveness, is Florida Statutes (F.S.) Chapter 112, Part VI, known as the "Officer's Bill of Rights". These Florida statutes require strict time limitations as to: (A) the release of information relative to IA investigations by the KWPD; and (B) the completion of an investigation by the KWPD. F.S. 112.533 (2)(a) states:

A complaint filed against a law enforcement officer or correctional officer with a law enforcement agency or correctional agency and all information obtained pursuant to the investigation by the agency of such complaint shall be confidential and exempt from the provisions of s.119.07 until the investigation ceases to be active, or until the agency head or the agency head's designee provides written notice to the officer who is the subject of the complaint, either personally or by mail, that the agency has either:

- 1. Concluded the investigation with a finding not to proceed with disciplinary action or to file charges; or*
- 2. Concluded the investigation with a finding to proceed with disciplinary action or to file charges*

F.S. 112.532 (6)(a) states²:

Except as provided in this subsection, no disciplinary action, demotion, or dismissal shall be undertaken by an agency against a law enforcement officer or correctional officer for any act, omission, or other allegation of misconduct if the investigation of such allegation is not completed within 180 days after the date the agency receives notice of the allegation by a person authorized by the agency to initiate an investigation of the misconduct. In the event that the agency determines that disciplinary action is appropriate, it shall complete its investigation and give notice in writing to the law enforcement officer or correctional officer of its intent to proceed with disciplinary action, along with a proposal of the action sought

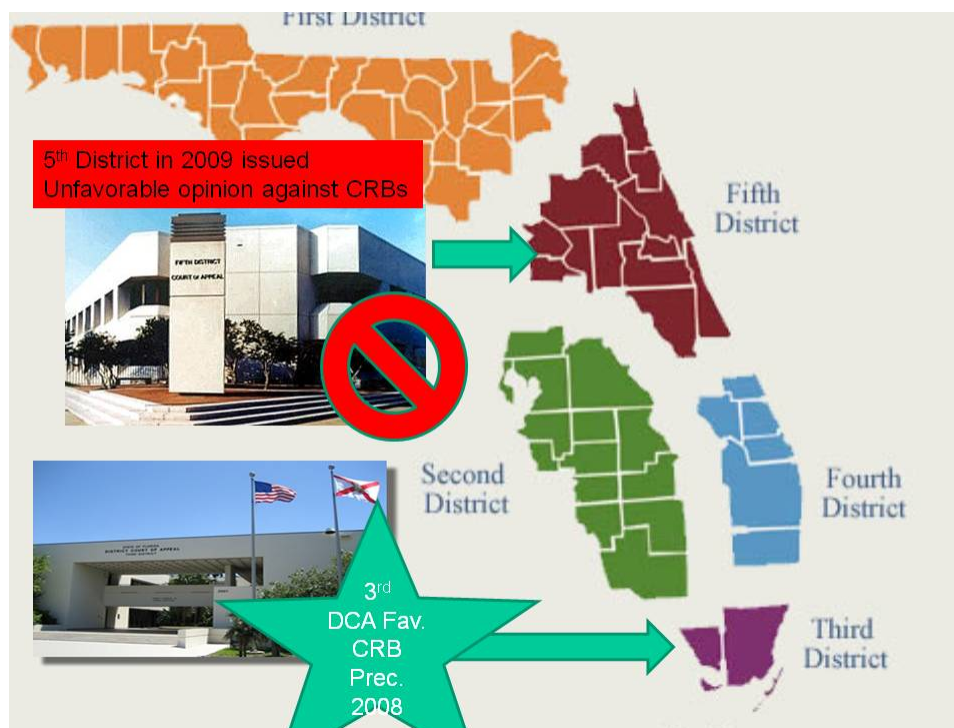
The Citizen Review Board has the authority to independently investigate complaints and issue subpoenas if necessary. Under the 2008 case precedent of Timoney v. City of Miami Civilian Investigative Panel (CIP), 990 So.2d 614 (Fla. 3rd DCA 2008) the City of Miami's police review board³, a sister municipal agency that generally is parallel in characteristics with the Key West CRB, was challenged in court when it exercised its powers to issue subpoenas and investigate the Chief of Police of the Miami Police Department. The trial and appeals court sided with the CIP and ruled that the CIP could investigate police and chief of police using the CIP's subpoena power authority via the Miami City

² F.S. 112.532(6)(a) enumerates five (5) limited exceptions to this mandatory 180 day time limitation for investigations completed and sanctioning announced .

³ The Miami CIP is an almost identical in nature, structure, power and responsibility as the CRB

Charter, outside the restrictions of the Officer's Bill of Rights. A complete copy of the Timoney case can be found on the CRB webpage.

However, in mid-2009 the Fifth Circuit Court of Appeals in the case of Jerry L. Demings, Sheriff of Orange County et. al. v. Orange County Citizens Review Board et. al., 15 So.3d 604 (Fla. 5th DCA 2009) reversed the Orange County trial court's decision and ruled that the Officer's Bill of Rights precluded civilian oversight board's independent investigatory powers, including subpoena power, when investigating sheriff deputies. In the Demings, the court ruled that the Orange County Civilian Review Board was improperly vested with these powers in light of the creation of the separate constitutional sheriff's office and the Officer's Bill of Rights. This has resulted in the middle district of Florida having conflicting law with the southern portion of Florida as pictured in the below graphic. More importantly, the CRB has been legally challenged in 2009 by the PBA as more fully explained in section VI(c) of this report. A complete copy of the Demings case can be found on the CRB webpage.



Division of Florida Circuit Courts of Appeals

VI. Fifth Annual Report January 1 2009- December 31, 2009

The files identified in this section are limited to the lodged and formal complaints received or forwarded to the CRB dealing with civilian complaints against sworn officers of the KWPD during the reporting period. A schedule of IA 2009 files which would include additional "internally generated" complaints is attached as "**Appendix A**" which was generated by IA and forwarded to the CRB for purposes of this Annual Report.

A. Summary of 2009 CRB Files:

During the reporting period, the CRB reviewed one (1) file which overflowed from 2007 and two (2) files that overflowed from 2008 during the reporting period. These are also represented below:

The files addressed by the Board in 2009 (but filed in 2007 or 2008):

File #	Complaint (Last name)	Respondent(s) (Last name)	Allegation(s)	Disposition	CRB Agreement with KWPD on Findings & CRB Disposition /Finding.
07-001	Brown	Omar	Untruthfulness	No Investigation	Under Investigation by CRB
08-012	Saintal	Mario	Harassment	Unfounded	No. CRB Finding of Not Sustained
08-013	Fisher	Valdez	Discourtesy	Settled, Mediated & Withdrawn	[No Finding Necessary]

The files addressed by the Board in 2009 (filed during the reporting period):

File #09-	Complaint (Last name)	Respondent(s) (Last name)	Allegation(s)	Disposition	CRB Agreement with KWPD on Findings & CRB Disposition /Finding.
001	Saintal	Mario	Racial Profiling; Harassment & Untruthfulness	Sustained (as to Untruthfulness only)	Yes. CRB Determined the Remaining Allegations as Unfounded

002	Murphy	Joseph	False Arrest	Deferred/no Action*	Deferred/No Action *
003	Calvert	Donna	Discourtesy /Decorum	Unfounded	File Rejected as not Appropriate for CRB Review
004	Parker	Lynn	Excessive Force /False Arrest	Deferred/no Action*	Unfounded
005	Price	James	Discourtesy	Withdrawn by Complainant +	No Finding
006	Downs	Sandra	Deficient Service/ Untruthfulness	Withdrawn by Complainant +	No Finding
007	Rodd	Shahdaroba	False Arrest/ Untruthfulness	No Investigation	Sustained as to Deficient Service of One Involved Officer; No Finding or Not Sustained as to All Other Allegations;
008	XXXXXXXXXX	XXXXXXXXXX	XXXXXXXXXX	XXXXXXXXXX	XXXXXXXXXX
009	Rodd	Shahdaroba		No Investigation	Under Review by CRB in 2010

* These complainants were facing current criminal charges in court arising from the event complained of and thus the KWPd refused to investigate per their standard operating procedures. The CRB deferred the matter and invited the complainant to refile after the completion of the criminal case/charges.

+ These complainants withdrew their complaint either after being fully advised of the facts and/or circumstances

XXXXXXXXXX-Represents that the complaint is an "active" and confidential under F.S. 112.533 (2)(a). For a more complete and more accurate description of any of the above files you should place a public records request upon IA and/or the CRB and/or review the CRB Agendas and Meeting Minutes found on the CRB website.

Further, the CRB staff addressed 16 lodged complaints during the reporting period.

Total files addressed/reviewed by the Board and the lodged files addressed by the CRB staff amount to 28 during the reporting period.

B. Issues of Concern During CRB 2009 File Reviews:

The vast majority of internal investigations by IA have been handled in a professional and timely manner and the CRB commends the Professional Standards Office and IA for their efforts in 2009. This section, and its critical analysis of the IA process, should not eclipse such professional efforts. This section is meant to be constructive in its critical review of some issues that came to light in 2009.

1. Inter-communication between arresting officers:

During the CRB #09-007 "Rodd" file review, multiple clerical errors were made in the arresting documents authored by the involved officers that most likely played a role in the ultimate unsuccessful prosecution of Mr. Rodd in the criminal court system. The officers involved seem to have used the "fellow officer" rule⁴ in documenting their probable cause when filling out their police reports. The police reports were either inaccurate or simply wrong. These clerical errors would have not occurred had the involved officers had better communication between themselves and the supervising shift sergeant would have reviewed all of the reports which would have revealed the material errors and contradictions. Chief Lee explained that it was apparent that one of the involved KWPD officers had mistakenly filled out some of the reports incorrectly and that the KWPD updated computer system has reduced these types of errors.

2. Questionable Integrity of the KWPD I-COP system:

The CRB has held general discussions on evaluating the I-COP in car camera and voice recording system after a IA presentation of the revised I-COP policy. The CRB appreciates the evidentiary training value and endorses their use. However, under the revised I-COP system, it is the CRB's understanding that the I-COP units can still be manually turned off by the officer under certain circumstances even when the emergency lights of a unit are in operation. This brings into question the integrity of these systems.

⁴ This is a standard procedure used by law enforcement officers involved in an arrest which is recognized by Florida courts. See Dewberry v. State, 905 So.2d 963 (Fla. 5th DCA 2005) (If a law enforcement officer has information amounting to probable cause, he or she can communicate that probable cause to an officer who lacks that knowledge for purposes for the second officer making an arrest)



Example of I-COP Video Screen from KWPD Unit

3. Failure of Officers to Attend the Meetings.

Although there is no mandatory attendance requirement by subject officers before the Board, such attendance would help facilitate a timely and fair resolution of the matter. Further, the appearance of the specific officer before the Board reflects genuine good faith and a concern by the subject officer. Since October 2008, all respondent officers have been, in writing, invited to attend, either personally or through a union or legal representative, the relevant CRB meeting. Unfortunately, very few invitations have been accepted by the subject officers and/or their representatives. Such unilateral rejection of these extended invitations is not a positive step towards building working relationships between the Board, KWPD management and the Police Union and its members.⁵

4. IA's continued blanket refusal to continue or commence ANY investigation under certain circumstances.

Of troubling concern is the policy adopted by IA to refuse to investigate a citizen's complaint if the complainant is facing pending criminal charges stemming from the interaction with the subject officer. Thus, many of the complaints referred to IA, are simply not acted on and dismissed by IA with a letter and no investigation. IA has adopted this standard operating procedure to avoid infringing on 5th Amendment rights of the complainant

⁵ There are reasonable explanations for officers non-attendance which include conflict of work schedules, personal commitments and alike. However, the CRB would welcome a police union representative to attend on behalf of officers to explain the officer's position. The CRB would also welcome a police union representative to give a presentation to the Board on Union processes to improve the relationship between the CRB & Police Union.

who is facing pending criminal charges arising out of the incident or interaction or to affect any underlying related criminal case prosecution of the complainant. This standard operating procedure is applicable even if the complainant wishes to proceed regardless of prejudicing their 5th Amendment rights.

However, IA is willing to reconsider the complaint after the criminal charges are settled should the complainant re-file the complaint. This standard operating procedure often results in the complainant abandoning their complaints completely and/or delaying a complaint for long periods, sometimes over two years.

A case on point is the CRB #07-001 "Omar Brown" complaint. Mr. Omar Brown alleged that Sgt. Pablo Rodriguez "lied" on an arrest affidavit under oath. Specifically, Mr. Brown alleged that Sgt. Rodriguez has never arrested Mr. Brown before, contrary to Sgt. Rodriguez's sworn arrest affidavit which stated he had. Mr. Brown wished to proceed forward with his complaint, even though he was facing a pending criminal trial relative to the arrest. IA refused to proceed and thus the responsibility to commence any investigation in a timely manner now rests with the CRB relative to this particular file due to the forgoing KWPD policy. The CRB has attempted to enforce its subpoena on the subject officer and the PBA has countered such efforts as explained in section V(C) of this Annual Report and the PBA has requested the court to rule that the CRB does not have independent powers to investigate law enforcement officers and invalidly granted subpoena powers.

The better practice would be for IA to get a voluntary statement of waiver of the 5th Amendment rights by the complainant, by and through the complainant's defense attorney, and proceed expeditiously should the complainant want to proceed forward with their complaint even if they are facing pending criminal charges. In the Omar Brown file, IA simply had to locate the subject affidavit, research Mr. Brown's prior arrests and determine if Sergeant Pablo Rodriguez was the arresting officer or not. Such a limited investigation by IA would not entail approaching Mr. Brown for any statement, other than the original complaint's contents, and thus bypassing any 5th Amendment issue.

5. Internal Affairs Representatives are members of the Police Union.

It has come to the attention of the CRB that the Director and Inspector of the Office of Professional Standards & IA, the primary if not exclusive KWPD investigators of complaints against officers, are union members. While the CRB appreciates and values all unions and acknowledges their importance in the workplace, such union membership reflects an appearance of partiality and conflict of interests. The Union defends and represents officers during IA investigations and their own members (IA staff) are investigating their fellow union members.

Although these IA representatives are very professional, such a conflict of interest and/or the mere appearance of this conflict of interest, should be eliminated in police operations. Further, it places these same IA representatives in a difficult position investigate their fellow union members and report to the CRB on these investigative results.

The CRB proffers a recommendation to correct this material issue/situation via the Recommendation section of this report to eliminate the appearance of partiality and would build the public's confidence that all complaints are being diligently investigated by IA and eliminate even the appearance of a conflict of interests.

C. Summary of CRB independent investigations and/or research during 2009:

As stated previously in this report, the Citizen Review Board has the authority to independently investigate complaints and issue subpoenas if necessary as verified by the landmark precedent case of Timoney v. City of Miami Civilian Investigative Panel (CIP), 990 So.2d 614 (Fla. 3rd DCA 2008) but see, Jerry L. Demings, Sheriff of Orange County et. al. v. Orange County Citizens Review Board et. al., 15 So.3d 604 (Fla. 5th DCA 2009). During the reporting period, the CRB has conducted one (1) investigation and/or independent research/evaluation:

Omar Brown File: As stated in section VI(B)(4) of this Annual Report, Mr. Brown desired to proceed with his complaint against Sergeant Pablo Rodriguez even though he was facing pending criminal charges arising out of his subject arrest. IA refused to proceed, even though Mr. Brown desired the matter to be investigated immediately. The CRB authorized public records research into the existence or non-existence of the sworn arrest affidavit by Sgt. Rodriguez and if its contents actually stated that

Sgt. Rodriguez arrested Mr. Brown before. The CRB did not pass on the issue if such allegation was truthful or not, as that issue would not be reached if the sworn statement never existed. The CRB Executive Director Muffler reviewed files at the Clerk of the Court's Office, contacted the State's Attorney's Office and the Public Defender's Office. Eventually, the sworn affidavit was secured and did contain the statement that Sgt. Rodriguez did attest to this alleged prior arrest by himself of Mr. Brown. The CRB then was presented with this evidence and decided to commence its own independent CRB investigation if IA or the subject officer will not cooperate. Without this independent CRB research of public records, this material document would have never reached the Board's attention for any type of review.

The CRB Executive Director examined Omar Brown's prior arrest records and Clerk of the Court criminal files and found no mention of Sgt. Rodriguez's arresting Mr. Brown or participating in Mr. Brown's arrest. The CRB Executive Director secured Sgt. Rodriguez's deposition testimony in the criminal case which failed to clear up the issue. The CRB Executive Director also reviewed available KWPD time sheets of Sgt. Rodriguez and "Field Interview Cards"⁶ but said analysis was inconclusive as to Sgt. Rodriguez's actual arrest of Omar Brown.

The subject officer was invited to voluntarily attend the CRB meetings to explain his statement in the subject affidavit but he declined. The subject officer was subpoenaed to appear before the CRB to explain his statement in the subject affidavit and declined. Only the subject officer can explain his statement in the subject affidavit. Mr. Brown's CRB complaint has now been pending with the CRB for three (3) years and the KWPD refuses to move forward on any investigation in this matter because Mr. Brown's criminal case is still pending in court. The CRB was forced to file an action in court to enforce the CRB subpoena and the PBA countered claiming the CRB did not have power to conduct independent investigations and/or was not legally vested with subpoena powers. This litigation is pending in the Circuit Court of Monroe County and all material court filings can be viewed by the public via the CRB website.

⁶ KWPD General Order 03.35 states that "Key West Police Department sworn members should conduct field interviews in accordance with procedures set forth in this directive" and 03.35.02.07 specifically encourages the officer to fill out a field interview card documenting the officers interface with a subject that did not lead to an arrest, by stating "Officers should make every attempt to complete all areas of the field interview card."

VII. Overview of Key West CRB Operations in 2009

Commencing October 2008 Executive Director Muffler commenced significant reformation of the CRB standard operating procedures relative to the CRB internal operations. The cornerstone of such efforts is the development of the new CRB website which can be located under the "CRB" department link from the City's homepage located at www.keywestcity.com. This website has been refined and upgraded during 2009 and a quarterly newsletter was added. The public can sign up for the CRB quarterly newsletter to be delivered to their e-mail upon its release. This newsletter has substantially increased the CRB's distribution of information to the public.

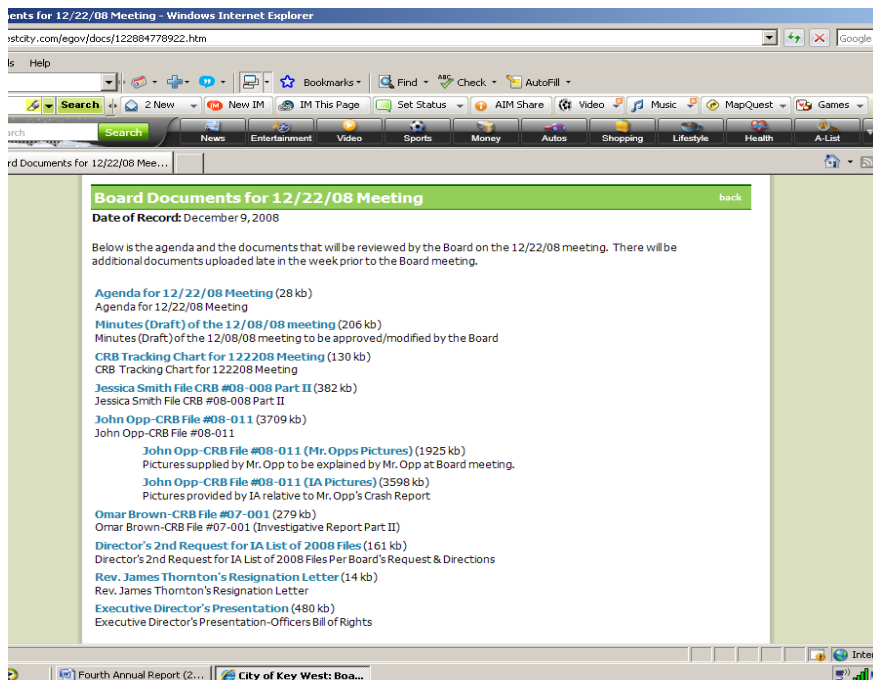


Snapshot of the top of the CRB webpage

This "user friendly" webpage now provides 24 hour access by the public of:

1. The City Charter Provision 1.07 which creates the CRB;
2. The CRB Policy and Procedures;
3. The Florida Officer's Bill of Rights & the Case Law;
4. A full colored downloadable CRB Brochure & PowerPoint Slide show explaining the entire CRB complaint process and CRB operations;
5. A downloadable commendation form to compliment an officer;
6. A downloadable complaint form to complain against an officer;
7. The entire CRB yearly meeting schedule;
8. Past CRB Meeting Minutes and Agendas for the past 4 years;
9. Useful NACOLE links;
10. CRB Staff Credentials; &
11. Related Police Oversight Links

Further, this access provides IA with a platform to demonstrate the effectiveness and completeness of each of its investigations. Finally, the Board members now receive their file documents via this delivery method and thus has saved the City thousands of dollars in copier costs, paper, manpower for reproduction, storage space, delivery charges and alike. This allows the public to also view these documents and makes the entire process transparent.



Snapshot of a typical CRB webpage featuring Meeting Documents in pdf formats

The advantages of the foregoing has opened up the transparency of the entire review process, permanently archived these critical documents safe from hazards and allows all of the City's residents to truly see their government in action. The public has embraced this continued new era of transparency the CRB website has facilitated.

The CRB has increased its community outreach through the Executive Director's presentations at the local Rotary Clubs, Bahama Village Meetings and regular appearances on local radio stations to discuss CRB activities. The CRB also presented its department overview to the City Ambassador program and regularly sets up the facilities for these classes and filled in as the coordinator when needed. Further, the CRB director participated in Law Day at the Monroe County Courthouse and presented a training session at the 2009 NACOLE conference in Austin Texas.

May Day Mock Trials by Local Students- 2009



13th Ambassador Class -2009

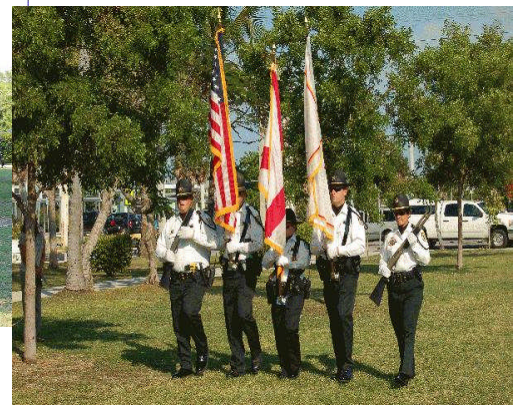


CRB Executive Director leads training seminar at NACOLE National Conference -2009 Ongoing Radio Interviews -2009

Further the CRB Website featured a pictorial online memorial for the fallen officers of Monroe County and the City of Key West with numerous pictures taken at Bayview Park Memorial Event



Sample Memorial Pictures



VIII. Recommendations by the CRB

The CRB would not be fulfilling its obligations under the City Charter without proffering recommendations to improve police accountability, promote police professionalism in the KWPD and build public confidence in the IA's and CRB's efforts to "police the police". Pursuant to City Charter Provision Section 1.07(X), the following recommendations are respectfully submitted to all stakeholders and should be addressed by the City Commission, City Management and the KWPD management forthwith:

1. The CRB office is temporarily relocated from its former 2008 public location on Eaton Street, to a trailer located inside Truman annex, removed from the general public and bus routes. This has been the result of budgetary constraints placed on the City to be unable to afford rental for CRB offices. The CRB understands this practical situation and is appreciative of said new temporary location. However, the CRB suggests that if it is financially possible, upon the completion of the new City Hall, the CRB office have its own individual private entrance on the first floor so it is accessible by the general public which will reflect CRB's its independent nature mandated by the City Charter;
2. The CRB requests that the "clerical assistance" mandated by the City Charter 1.07 IX (c), should be funded to support a part-time assistant for the CRB office once the city's general budget faces less constraints during these trying economic times. This will allow the Executive Director to use his limited time doing meaningful tasks which include conducting investigations, meeting with city and police officials, interfacing with community activists, attending community functions, conducting police "ride-alongs" and generating detailed Annual Reports, instead of attending to clerical activities. Again the CRB is appreciative of the funding it presently has and understands the financial shortfalls that local governments are facing so this additional funding may not be practical at this time;
3. The CRB recommends that KWPD Office of Professional Standards & IA members be non-union. City Management should conduct a "Best Practices" review of police departments across Florida to determine if KWPD has an abnormal percentage of "Union Membership" presence in such a department.

In the alternative, the KWPD Chief of Police should recognize this apparent conflict of interest and remedy it accordingly by hiring an "Inspector General" (IG) to head the IA department. This IG should be a non-union member, with no ties of previous union associations with the present police union and who reports directly to the Chief of Police, as a member of the Chief of Police's Office, and to be the "point" person to interact with the CRB and dispel any appearance of "conflict of interest". The IG would be an employee of the KWPD so as to satisfy the Chapter 112 Officer Bill of Rights meaning of "employing agency".

4. Under the revised I-COP system, it is the CRB's understanding that the I-COP units can still be manually turned off by the officer under certain circumstances even when the emergency lights of a unit are in operation. The integrity of this recording system, and its usefulness, is undermined when such manual termination of the recording process is available to officers, who are below the supervisory rank. The CRB has no authority to mandate that such systems be continuous when activated until such time as the activation (unit emergency lights) are turned off. However, such a policy (ie. no manual deactivations by the drivers of the units) would boost the credibility of the entire I-COP program;
5. The CRB, being a City Charter entity, should have one screen viewing shot displayed on the city's informational channel which rotates during off air time and which describes the CRB's functions and contact information. This will be another informational mechanism to increase the public's awareness of how their local municipal government is here to serve their interests;
6. The KWPD should offer a 45 minute seminar slot in its "Citizen Police Academy Program" (CPA) to the CRB to show the public how close the two departments work together and to assure police professionalism is at its highest standards. Currently the CRB does do a presentation to the City's Ambassador Program, and the CRB is very appreciative for this opportunity. However, if Chief Lee were to invite the CRB Executive Director to do an annual presentation at the CPA, this will reflect how important the CRB is in the overall police discipline procedure;

7. Numerous inquiries have been received by the CRB director if the CRB meetings would be televised on cable TV. When it becomes financially and technically feasible, the CRB would respectfully request that its meetings be aired on cable TV to continue its movement towards a more open government;
8. The KWPD should re-evaluate how it trains its officers and implements the "fellow officer rule" to ensure information being passed from one officer to another is accurately recorded to avoid errors and any possibility of conflicting police statements, affidavits and incident reports involving several officers attesting to the same event.

It should be noted that only #8 above is the only new recommendation and all other recommendations mentioned above were generally submitted by the CRB in its 2008 Annual Report but remain either (1) un-adopted; or (2) under advisement at this time by the KWPD or City Management.

In closing, the CRB again would like to stress its highest respect and regard to the men and women of the KWPD who truly are protecting paradise. Nothing contained in this report should overshadow the CRB's steadfast support and admiration of our police department, its members and its current leadership.

Appendix A
[Provided by KWPD IA Department]

Complainant	Complaint	Disposition/ Date Closed	Ofc. Involved	Case No.	Date Filed	Finding : <i>See file for complete information</i>
KWPD	Crash Investigation Rendering Aid	Closed 06/09/2009	Wallis Rauen	PS 09-001	01/07/09	Count 1: Not Sustained Count 2: Not Sustained
KWPD	Decorum Toward Members Harassment In the Work Place	Closed 06/09/2009	Black Winter (Civilians)	PS 09-002	01/15/09	Count 1: (Black) Sustained Count 1: (Winter) Sustained Count 2: (Winter) Sustained
KWPD	General Towing	Closed 12/28/2009	Pelote (Civilian)	PS 09-003	05/19/09	Inquiry into civilian employee closed following inquiry.
KWPD	Unbecoming Conduct Unlawful Conduct Private Conduct	Closed 08/13/09	Hadas	PS 09-004	06/08/2009	Count 1: Sustained Count 2: Sustained Count 3: Sustained
XXXX	XXXX	OPEN	XXXX	PS 09-005	10/01/09	OPEN
XXXX	XXXX	OPEN	XXXX	PS 09-006	12/13/09	OPEN
XXXX	XXXX	OPEN	XXXX	PS 09-007	12/13/09	OPEN
XXXX	XXXX	OPEN	XXXX	PS 09-008	12/16/09	OPEN

XXXXXXXXXX-Represents that the complaint is an "active" and confidential under F.S. 112.533 (2)(a). For a more complete and more accurate description of any of the above files you should place a public records request upon the KWPD IA.